

May 4 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

DA 09-0500

IN THE SUPREME COURT OF THE STATE OF MONTANA

LON PETERSON,

Plaintiff/Appellant and Cross-Appellee,

FILED

MAY 04 2010

v.

ST. PAUL FIRE & MARINE INSURANCE COMPANY,

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Defendant/Appellee and Cross-Appellant.

PETERSON'S OBJECTION TO ST. PAUL'S MOTION FOR
CONSIDERATION OF ADDITIONAL AUTHORITY

APPEARANCES:

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This matter was fully briefed by the parties, along with *Amicus Curiae*. The issues were of such significance that the Court set oral argument which was held before the full Court on April 21, 2010. Without any authority whatsoever and without obtaining an order of Court, St. Paul has attempted to make new additional arguments for the first time on appeal, long after this case was submitted following oral argument. St. Paul, under the ruse of asking the Court to consider "additional authority" has totally violated Rule 12(6), M.R.App.P., which only applies when new authorities come to the attention of a party after the briefs have been filed or after oral argument. In such a circumstance, the party is allowed only to advise the Clerk of the Supreme Court with a notice. Any argument is expressly forbidden. Rule - 12(6), M.R.App.P.

In defiance of this rule, St. Paul has belatedly asked the Court to rely on a 1967 Supreme Court decision and certain ethics opinions which have been in existence throughout this case and are not in any way new. These decisions were never relied upon or referred to by St. Paul's counsel in briefing or during oral argument and in no way alter this Court's decision in *In Re Rules*, which was argued repeatedly in the briefs and during oral argument. Amazingly, St. Paul, on pages 2 through 5 of its motion, titles its ill-filed document as "Argument" and then proceeds to argue issues and facts that it never argued before in this case. The conduct of St. Paul in this matter simply should not be countenanced by the Court because this conduct is directly

violative of this Court's rules and the appellate rules and this Court should order that St. Paul's motion for consideration of additional authority be stricken from the record and that its counsel be admonished.

DATED this 3rd day of May, 2010.

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CERTIFICATE OF SERVICE

I do hereby certify that on this 3rd day of May, 2010, I mailed a true and correct copy of the above and foregoing through the United States Postal Service, postage prepaid, to the following:

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